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Prohibition of Child Labour Leading To Delinquent Behavior in the Constitution of Islamic Republic of Pakistan 1973

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Abstract: The most common problem in the developing countries is child labour mainly due to poor socioeconomic environment. It came to light during the nineteenth century, when the industrial revolution and factory system were at its peak. The basic motive of this study is to explore the prohibition of child labour leading to delinquent behaviour in the Constitution of Islamic Republic of Pakistan, 1973. Qualitative method of investigation was applied in this study. Through content analysis, purposive sampling was used in selection of only those documents that were associated to constitutional initiatives regarding child labour. The main ground of child labour and delinquent behaviour stems were poverty, no better avenues of employment and lack of education and health facilities. In Pakistan Article 11 (3) of the constitution of 1973, prohibits service of children below the age of 14 years in hazardous employment. The research is limited to exploring various causes of child labour leading to delinquent behaviour prohibition under the constitution of Pakistan. The findings of this study are useful for law enforcing agencies, civil society and policy makers in order to recognise the reality of this phenomenon.

Keywords: Child Labour, Delinquent Behaviour, Education, Poverty, Constitution of Islamic Republic of Pakistan 1973

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1. Introduction

The best stunning creation of Almighty Allah is children. The nature of child both inwardly and outwardly is pure and innocent. No doubt, they are magnificence of this universe. During this period, the individual learns the basic skills of life and fundamental values from their formal

education. While the issue of child labour continues to attract a lot of attention because there are many disturbing social problems like the issues of child trafficking, child prostitution, organized begging are continuing to make headlines as a chief culprits daily in several developing countries. The nature of work that effects on the emotional, social, physical, intellectual and honorable improvement of child denotes as the Child labour (Constitution of Pakistan, 1973). All those activities which are injurious to the healthy development of children are considered as the violation of their rights that differs significantly in different environments. When these works are against the physical and psychological nature of children then it produces a negative impact on their behaviour and cause delinquent behaviour in them leading to negative social activities. This study looks at the impact of the constitutional provision of Pakistan 1973 and other national and international laws related to the problem of child labour and analyses the effectiveness of a comprehensive legislative provision of Pakistan constitution 1973 about the problem of child labour. Moreover, this study describes the consequences of child labour that leads to delinquent behaviour among children in the society. The main research question of the study is what are the constitutional provisions for the prohibition of child labour in the constitution of Pakistan 1973 and are there some activities which constitute child labour or harmful work that leads to delinquent behavior in children.

In the 21st century, international community has shown great concern over the growth of child labour. Both industrialized and developing nations have codified protection of public health and labour laws and various laws coexist at domestic and transnational levels to fight against child labour, but the enforcement of such laws has remained weak (Scanlon, 2010). In many countries, children have acquired a certain degree of protection, where child labour policies and laws have been enforced effectively, but even then there remains many problems associated with child labour. It is thus, instructive to highlight the role of legislative dogmata alongside the child labour. In Pakistan series of child labour laws exist, but still the implementation of such laws remains weak (Rich, 2008). The incidence of child labour and particularly child exploitation remains high in Pakistan as compared to other countries. Hou (2013) have pointed out that legislation is not enough to fight against the child labour both at the national and international levels, it has to intersect with policies that make child employment in hazardous areas and consider as an expensive phenomenon both in the state and in impoverished families. Therefore, this study may help to law enforcing agencies through which they can understand causes of delinquent behaviour among children and it may also highlight all constitutional provision for the prohibition of child labour in the constitution of Pakistan 1973.

2. Literature Review

Within this theme, researchers found different reasons and statistics of child labour in Pakistan that caused delinquent behaviour among children through content analysis of various reports and researches. It is found that mostly children's behaviour becomes delinquent when they are treated with cruelty (Robert, 2008). The physical and moral dangers of child labour argued by the reformers and feared the brutalization of children for the purpose that would contribute in the working of dehumanization class (Shaw, 2006). Several factors can be attributed to the global phenomenon of child labour. In many underdeveloped countries, the rapid growth of the population, low wages, price rises and in elevation degrees of redundancy have subsidized the problem of child labour (Bukari, 2008). Due to these reasons children involve themselves into economic activities which become to the necessity for children who belong to poor families (Bass, 2004). However, unlike in Latin America and Asia, the impact of globalization has been observed and easily visible in the service oriented sectors in which children work mostly (Bukari, 2008). Under households with nine plus members their girls come into labour market especially in domestic labour (Kamer, 2013). Majority children function in the private sector

(carpet, restaurants & agriculture industry) while minority in formal sector (sports, pharmaceuticals, paper, textile and surgical instruments industries) showed by sector analysis. In Pakistan, the most common form of child labour is domestic child labour, which included major informal sectors where children were mostly working (Scanlon, 2002). Children start working at the age of 5 in most countries especially in Pakistan and India (Scanlon, 2002). The indentured servants are million in number who were not free or released from their debts and due to this reason they were connected to child labour and it is called as bonded labour system (Kamer, 2013).

In the global slavery index Pakistan ranks in third (Brackly, 2013). Around 2,000,000 to 2,200,000 people estimated that are involved in various forms of modern slavery in Pakistan. Slavery has become widespread in Pakistan and generally run by officers of the law enforcement agencies, including government officers, paramilitary forces, the police and persons with financial and political influence in particular by the rich landlords. There are reports that across the country the military in their detention centers use girls as sex slaves in order to obtain confessional statements from people who are forcibly made to disappear, particularly more so in the Baluchistan province (Brackly, 2013). Similarly, across Pakistan's borders, shocking statistics have emerged with regard to human trafficking; there have been more than 200,000 Burmese (Burma) and 1 million Bangladeshis girls trafficked to Karachi, Pakistan (Sinha, 2005). There are different cities in Pakistan which play as a central source of human trafficking in the form of child labour and among these cities Multan, Sukkur, Larkana acts most rampant or production center for transfers of children from one place to another (Brackly, 2013).

3. Methods and Procedure

Qualitative way of investigation was applied in this study. Through content analysis, purposive sampling was used that was totally related to those documents which were associated to constitutional initiatives regarding child labour.

3.1 Content Analysis

All documents which were related to constitutional initiatives regarding child labour were analyzed and following two themes emerged through content analysis;

1. Delinquent behavior of children
2. Constitutional Guarantee of child labour
 - a. Slavery, forced labour, etc., prohibited. (Article 11)
 - b. Freedom of Association. (Article 17)
 - c. Freedom of trade, business or profession (Article 18)
 - d. Right of Education. (Article 25 (A))
 - e. Promotion of Social Justice and Eradication of Social Evils (Article 37 (e))
 - f. The position of Child in the post 18th Amendment

3.1.1 Delinquent Behaviour of Children

In accumulation, this problem of child labour has been recognized due to socialization because it is a process in which future vocational skills developed through the guidance of parents or guardians receive training for children (Bukari, 2008). Moreover, the violence and delinquent behaviour of children comes from household activities that are determined through different studies at the micro-level and it is related to the emergence of child labour (Longford, 1995).

Mostly in 48% of cases, the main factors of child labour and delinquent behaviour is family decay such as broken family system due to divorce and abandonment (Shaw, 2006). Some other factors such as lack of morality, absence of attention in education, physical neglect and lack of training were become the main cause of early manipulation of children into unskilled labour and make bad examples that are produced in the society (Bejarano, 1929; Makhoul, 2004). The most

vulnerable and poorest children are most often involved in work in order to earn money for their survival in the developing countries (Shaw, 2006). Necessities of food and medical care regarding Anaemia, Diarrhea and micronutrient deficiencies are necessary for children but unlikely they have not these necessities (Wigle, 2003). Delinquent behaviour caused in the society because of comprising the absence of public securities for children, rejection, child abuse, neglecting attitude of people, poor home life, lack of educational opportunities and child labour (Shaw, 2006). These factors are the main reason of delinquent behaviour in the child's personality (Wigle, 2003). In Pakistan, communal aspects act as the fundamental factor delinquent behaviour and due to Pakistani philosophy, household building and deficiency of communal prosperity or child protections, it proclaimed these situations that were distinctly different from other countries (Wigle, 2003).

Unsupervised and unprotected children are also at the risk because adults use children for sex, begging, child labour etc (Shaw, 2006). Children living at Madris as are also at high risk of physical abuse, sexual exploitation and verbal abuse (Shaw, 2006). Similarly, electronic as well as print media played role to develop negative and risk behaviours through mini cinemas, movies, and internet cafes (Mahmed, 2001). Commonly drug use, physical abuse, involvement in crime, sexual exploitation, abuse by police, parents, friends in groups are at the risk of delinquent behaviour of street children. Moreover, it was revealed that this situation is different in different cities like risk of drug users are less in Sukkur and Larkana (Mahmed, 2001). The risks of involvement in crime and drug use are high in Hyderabad and Karachi where the delinquent behaviour of children is high because of child labour issue (Mahmed, 2001).

There are a number of reasons for child labour that have produced physical and psychosocial impact on children. Children engaged themselves into labour market due to two main reasons; first one was poverty and second one was financial status of their families because these are the main factor who help in achieving basic needs of life for themselves as well as for the family members (Shaw, 2006). The low financial status of their families is produced when the main head of family is disabled due to illness, or dead. So all those children who face such problems in their lives cannot able to attend or even have no time for studies and school (Ray, 2000). Therefore, a deficiency in the accessibility of educational facilities amplified the threat of child labour (Musvoto, 2007). Another dark picture of child labour which was pointed by ILO is that the drop-out of children from the school due to the weak educational system and low quality of education in schools (Brown, 2005). From the labour market, children are that source which are easily attract towards work because children are those employee who can work at low wages even at the risk taking working conditions for children (Shaw, 2006). Such type of young employee have no ideas about the worth of salary and benefits that they have right to receive in the return of their services (Shaw, 2006). Similarly they also have no idea about the employee's legal consideration within a company, organization or industry. So the demand for hiring children increase because of children's workers receives a remuneration corresponding to the half of that for the grownups people (Arat, 2002). The learning capacity within children are more likely high than the adult that's why industries hire them and accept children as labour to work for a longer period at low wages (Mahmed, 2001). The physical working environment was mostly not suitable for the children such as physical damages and sicknesses, mal-nourishment, trauma and direct exposure to harm as a result of non-use of appropriate clothing which have shown through previous studies (Scanlon, 2002). The growth and development specially the skeletal structure of children effected through the hard work that may increased pressure on the bone and can cause damage to the skeletal system for later on life (Shaw, 2006). Different health issues which were produce due to child labour and these issues were highlighted by an International Labour Organization (2008) and its report shown that the problems in sleep, central

nervous system and intelligence were broader area of children which were effected through risk taking physical working environment or conditions (Musvoto, 2007).

Moreover, the most dangerous results that come out through the child labour are the abusing activities such as sexual abuse, especially in the case of female children affects negatively that was most risky and vulnerable and cause more delinquent behaviours among the children (Musvoto, 2007). Those who involved in such activities were not able to build trust relationship and their relationship with other was affected (Shaw, 2006). It is worth mentioning that the sexual abuse of children also affects their relationship with others within their community and they sometimes loss their self-confidence and sometimes they were over confident (Shaw, 2006). This would increase the prospect of destructive and delinquent behaviours against the community within children. Different studies show that such type of children were highly rejected by their co-workers and teacher and due to this reason they have no confidence to attend or they face difficulty to engage themselves into school activities so they left their studies (Shaw, 2006).

Shocking statistics regarding child labour that cause delinquent behavior among children in Pakistan were found through various reports. Through the nationally representative child labour survey, it was found that 3.3 million children suffered with the problem of child labour in which 0.9 million (27%) were girls and 2.4 million (73%) were boys (Jafri, 1997). According to Federal Bureau of Statistics of Pakistan, 40 million children lived in our country in which five to fourteen years old children are 3.8 million and 2.7 million Children out of 3.8 million and 73 percent (2,400,000) of them said to be boys in the agricultural sector where are mostly belong to urban areas and work services and manufacturing industries (Kamer, 2013). With low-income bracket, working children comes from large families. Eight members were the average household size of working children, but the national average is less than that average (Scanlon, 2002).

It is the responsibility of our government and public establishments must be aware about the hazardous works that cause risk or danger on the growth and development of children in every aspect of their lives. It is an obligate duty of our government and public institution that make suitable and acceptable legal consideration for the safety and security as well as making them susceptible to psychological problems and to make a determination to condense child labour as precedence on their schedules. The image of social life or society has prodigious encouragement of child labours that's lead to delinquent behaviour among children. Parents and employers' mistreatment of children in the mature works was produced due to the absence of apprehension and acquaintance of the society regarding the impact of child labour (Musvoto, 2007). Another big reason of child labour is their culture (Ray, 2000). All the above reasons such as poverty, financial status of family, lack of awareness about the legal consideration, low wages, learning capacity of children and the absence of establishing laws that eradicate child labour in the communities, the problem of child labour appears widespread in our society. Therefore, the United Nations abolished child labour and the World Health Organization reported that child's vulnerability increases due to nonexistence of satisfactory adults' protection and the absence of restraining laws that increases to the psychological and social risks caused from the work itself in the year 2004 (Susan, 2004).

3.1.2 Constitutional Guarantee of Child Labour

Second major theme that has been emerged after thorough analysis of Constitution of Pakistan is named as constitutional guarantee of child labour. In today's competitive world, where child labour and unification of wages is quite commonly practiced, we observed that if someone attempts to work against child labour and low wages, he/she is surely facing threat from his/her company' closure. In such situation, it is the responsibility of the state to work for the removal of such reasons that promotes child labour. In addition, it is also the responsibility to legislative agencies on this issue and to save the trapped individuals from this social reality. The Pakistan

Constitution is thus not merely a constitutional document because it is a social document that helps in the maintenance of socio-economic revolution. Muhammad Gul, Justice, emphatically said: “The principle which characterizes on which the Government is envisioned to task and these ideologies are far ahead prolonged into Fundamental Rights in Part II in a social document is headed by a Preamble” (Saharay, 2001). Part II Constitution of Pakistan contains a long list of fundamental rights. Fundamental rights of children are limited under article 18, 19, 27 of the constitution of Pakistan. The fundamental rights, which are available only to the nations, are,

1. Do not discriminate people on the ground of caste, religion, race, sex, place of birth. (Article.27)
2. Give equal chances in the matter of civic occupation. (Article, 18)
3. Give six freedoms to the people like freedom of expression and speech, movement, residence, assembly, association and profession. (Article, 19,15,16,17,18)
4. Culture and educational rights conferred by Article 28 and 25 (A).

In Pakistan, especially Child domestic works are deprived of all fundamental rights (such as Articles 11, 18, 25A, 25(3) given in the Constitution of Pakistan. A household cannot possibly monitor so the government cannot bring labour laws against domestic works. Pakistan state acknowledges and prohibits force labour, slavery, external trafficking and wickedest practices of child labour only in the document, but has not been able to take any administrative measures to ban child labour and stop murders and brutal torture of innocent child labourers (Sinha, 2005). According to Dr. Kozue Kay Nagata, UNESCO’s Representative of Pakistan, “due to child Labour, children deprived of availing their fundamental right to free education” (Sinha, 2005). Actually, education is a basic human right. Children deprived from attending school when they are involved in a laborious work, so the delinquent behaviour arose among them. By growing problem of insufficient access to schooling caused the worsened situation. Today, children who are at the age of five to nine years old that are approximately 7 million in numbers are not able to attend schools because most of labour subject to child. Under Article 25-A will be enforced towards the elimination of child labour an effective strategy, by making education, at least up to secondary level complete free and compulsory (Sinha, 2005). Child labour in the society perpetuated because of poverty, absence of consciousness among parents about the worth of education, illiteracy and unsuitable learning environment (Brackly, 2013). Another important cause of child labour is the quality of education as well because the child labour is highly correlated with quality of education in Pakistan (Devid, 2012). Therefore, it considered that the rate of child labour becomes decrease in our society, if state provides quality of education along with good learning environment (Devid, 2012). Therefore, after thorough content analysis of Constitution of Pakistan, 1973, it is found that following articles of constitution are directly associated with child labour;

- Slavery, forced labour, etc., prohibited. (Article 11)
- Freedom of Association. (Article 17)
- Freedom of trade, business or profession (Article 18)
- Right of Education. (Article 25 (A))
- Promotion of Social Justice and Eradication of Social Evils (Article 37 (e))

On the basis of above mentioned articles of constitution of Pakistan, following national legal approaches are practiced against child labour;

- The Plantations Labour Act, The Factories Act, The Mines Act, The Merchant Shipping Act, The Motor Transport Worker Act, The Atomic Energy Act and Beedi and Cigar Workers that were related to the conditions of Employment (1923, 1934)

- The Employment of Children Act of 1991
- The Bonded labour Act 1992
- Program of Punjab Education Sector Reforms
- Educational Voucher Scheme Programme, Punjab Education Foundation (1991)
- Supported Programme of Bait-ul-Mal
- Child Protection and Welfare Bureau Programme (2004)
- Post 18th Constitutional Amendment in 2010

According to constitution of Pakistan, following international legal approaches are practiced against child labour;

- Ratified ILO Conventions (Various Age categories of children provided for distinct forms of Services)
- Programme of Asian Decent Work Agenda (efforts on rights at work place, standards, fundamental principles, social dialogue and social protection)
- Millennium Development Goals (Worldwide Commitment regarding strategies, plans and heightened programs to accomplish multiple goals for achieving mentioned targets)
- Millennium Acceleration Framework (50 developing countries are now adopting the MAF to speed up a movement that was selected by MDGs Actions)
- Programme of Education for All (EFA) (Mainly targeting on Primary Education and abolition of illiteracy in worldwide)

In the next section, we explained all the articles of Constitution of Pakistan, 1973 along with most popular legal cases that are directly associated with child labour.

3.1.2.1 Slavery, Forced Labour, etc., Prohibited. (Article 11)

Pakistan's constitution under Article 11 specifically disallows all kinds of forced labour and slavery. This Article strongly forbidden slavery and any forms of labour and it describe that there is no law that authorize or assist its introduction in Pakistan. It disallows the employment of children under age of 14 in hazardous sector such as mine, trafficking of human beings etc. It was held in *People Union Vs. Union of India* (AIR 1997 SC 1473) that “it is not allow to force any individual for labour even through payment, at this situation a force labour expression has been utilized over here”. In addition, in *Chandra Vs. State of Rajasthan* (AIR, 1956) was held that “the labourers obliged to work at wages less than the minimum wage the small falls within the mis-chief of force labours”. The Supreme Court observed in *Darshan Masih vs. State* (PLD 1990 SC 513) “there is an absolute need for legislation that defines forced labour and its different practices”. It has noticed in several cases that the parents have forced to send their kids to work or labour instead of getting schooling because of overall poverty in the country, so practically the child labour is very much in existence even it prohibited under Article 11 (Mahmood, 2014). A new U.N. study says “during the past year human trafficking from and through Pakistan has increased” (Brackly, 2013). Slavery was one of the most aggravated forms of human bondages that existed in ancient times. In Pakistan different types of slavery practiced of which enslaving of human beings in order to clear a debt was one. It was called as bonded labour system. By constitutional protection, with the ushering of independence, great anxiety has shown to protect the human decency and dignity and to abolish all sorts of exploitation. Thus the right against exploitation has made as a guarantee under the Constitution, which later became the hallmark of Pakistan constitutional jurisprudence. Article 11 and the bonded labour law faced their existential crisis in the face of the evil's continued threat, forcing the mile of law to retreat ingeniously (Pylee, 1994).

Under Article 11 prohibits “forced labour”. It was held in *Sanjit vs. State of Rajasthan* (AIR 1983 SC 328), “Corporeal force means to provide service to another or it may be put onward through a legal provision as fine or imprisonment when an employee fails to exercise service or labour and it may be compulsion arising out by poverty, deprivation and hunger amounted in force labour.”

Similarly, it was held in *Chandr vs. State of Rajasthan* (AIR 1956 Raj 188) that “a person which deprives from any factor of a choice and induces him to accept that one specific or exact course of action of service or labour, then it may properly be regarded as “force” and it would be forced labour”(Pasha, 2013). Therefore, every citizen has a constitutional fundamental right to protect himself from all forms of force labour in which child labour also is included. Protection is provided to children from monetary exploitation under Article 11. In addition, the main responsibility of the government of Pakistan is to exercise or practice that is likely in the favours of the child’s moral, social, mental, spiritual, health, educational and physical development and progress (Pasha, 2013).

3.1.2.2 Freedom of Association (Article 17)

The provision of seventeenth Article is analogous to the provision of Article 11 (1) and (2) of the Covenant on Human Rights, Article 19 (1) (e) and (4) of the Indian constitution and Article 10 of the 1956 Constitution and Fundamental Right No.7 of the 1962 Constitution. Article 17 (2) describes that it is citizen will to take participation against the usurpation and in different programs of Pakistani government through proper political channel or activities (Pasha, 2013). It is governmental duty to provide a basic guarantee to the citizen for such facilities (Pasha, 2013). Under this Article guaranteed every citizen (that is known well within his precise) to practice a connotation or amalgamation and question to any sensible constraints. It is a combination of workers for securing by united action favourable condition as regards wages, hours and terms of employment of bargaining on the behalf of the workers with employers. A Labour union can be either a corporate body or an unincorporated body. An incorporated union can treat as a legal entity. However, an incorporated body is not a legal entity for all intents and purpose, it is doubtful, whether it can enter into a binding contract on the behalf of its members with its employer. On the other hand, a corporate/registered union is an authorized unit and a binding agreement with an employer. Any change in the membership will not affect its legal status. Since there is no requirement under Article 17 (1) of the Constitution that an association or a union cannot effectively function unless it is registered and a legal framework is provided for exercising the public order or morality under Article 17 (Pasha, 2013).

3.1.2.3 Freedom of Trade, Business or Profession (Article 18)

A provision of Article 18 is analogous provision of Article 19 (1) (g) of the Indian Constitution, Article 12 of the 1956 Constitution and Fundamental rights No, 8 of the 1962 Constitution. Article 18 consists of two parts. The basic purpose of this Article was to enable the citizen to adopt and explore his earning and living. A person who intends to conduct a particular business or trade, which may involve some special skill and the expertise, such qualification prescribed for them. In the second part of this Article permits only “lawful” profession or business (Mahmood, 2014). The High Court of Pakistan has observed, “Law can be made that dictate to any employment or occupation by certifying structure” (PLD 1993 Lahore 584). By the superior courts in the implementation of the supremacy of the jurisdictional evaluation, can be examined the validity of such prescribe the qualification or the prohibition. In addition, in another judgment has observed, “It is a touchstone of other fundamental rights, including Article 18 and other provision of the constitution” (PLD 2004 Lahore 376). The Sind High Court has held that “Right of trade /business or profession under Article 18 of the constitution is not an absolute right, but a citizen, who is eligible to conduct a trade or business and cannot be deprived from undertaking the same, subject to law which regulate it accordingly then it is lawful. Business and /or trade must be lawful and subject to qualification as prescribed under law” (PLD 2012 Sindh 129). It was held in *Arshad Mahmood vs. Government of Punjab* (PLD 2005 SC 193) that “In Article 18 of the constitution word “qualification” has been used to confer a citizen not to

conduct any unlawful trade or business, but have a right to enter upon any lawful occupation or profession. A person without having a qualification that is mentioned in Article 18, who cannot run a business or trade, otherwise, it becomes unlawful or void”(Pasha, 2013).

Freedom of the profession does not mean the freedom to enter upon any profession or occupation without having the required qualifications. Regulations of the profession of medicine, dentistry, law and other like professions, which involve the safety and health of the public carried on in most of the countries and the law may prescribe such qualification. When a business for the utility of the public and essential that it should have the confidence of the public. In that case, of trade or business the state in requiring technical qualification and in such business may lay down rules and regulations necessary to secure the confidence of the public (Rehman, 2011). When the state may prescribe qualifications by virtue of any with regard to any profession or occupation then the court will not be entitled to consider the reasonableness of any profession or occupation. Qualification implies the requirement that renders eligible to place a position of employment and a particular pursuit or profession relates to the fitness of the capacity of a person (Pasha, 2013).

3.1.2.4 Right of Education. (Article 25 (A))

It is the state responsibility to make law for the protection of children and women. Article 25 (A) abundantly makes the intent of promoting and protecting childhood killer. The state has responsibility and make effort to provide free and essential or compulsory education for all kids until to reach the age of fourteen years (Pasha, 2013). The impression of children work as being by its very nature harmful exemplifies in Article 25 (Abebe, & Bessell, 2011). According Article 25 (A), every child should be educated and this duty or obligation belongs to the state, parents and child. So any work that create hurdle in the way of getting education amounted as a hazard. Any negation of education is hazardous. This provision of education under Article 25(A) is the two-in-one principle (Mahmood, 2014). As to this Article the constitutional mandate of government is to implement this principle instantaneously and to ensure education for all especially for those who had no such opportunity or facilities as under the former dispensation. The constitution makers hoped that the administrators would make the future government on toes and forcing them to appliance the directions with all seriousness then the right of education would be able to enjoy every child (Abebe & Bessell, 2011). It is indeed paradoxical to note at the cost of repetition that Article 25 is a great progressive standard that enthusiastic to the people of tomorrow. Nevertheless, in the volumes of legal luminaries has received unsuitable attention towards this issue (Pasha, 2013).

3.1.2.5 Promotion of Social Justice and Eradication of Social Evils (Article 37 (e))

The health of workers, the tender age of children keep in the consideration within the directive principles which are embodied in Article 37 (e) and (f) reinforce that citizens are not forced to enter occupations that are unsuited to their strength or age and it ensure by the state's law and emphasized on the economic necessity. The dignity, freedom, moral and material abandonment against the exploitation of children has been ensure through the opportunities and facilities for the development of healthy manner and condition of childhood and youth through the promotion of social justice and eradication of social evils (Rehman, 2011). The violation of children rights decreased through the involvement of the judiciary especially in the climax of violation but even such rare interventions taken gestures without any vibrant touch which failed to provide the constitutional imperative of educating the children and neither left literature on the philosophy of childhood (Abebe & Bessell, 2011). Striking a concordant note the Supreme Court said in a monthly report that "The essence of the Constitution perchance is that children should not be labouring in factories as childhood in their formative period and they are meant to be subjected to free and compulsory education until they reached at the age of 14 years" (Rehman, 2011).

3.1.2.6 Position of Child in the Post 18th Amendment

The 18th amendment that passed on April 2010 related to all those matters which are now solved at all provinces level and accountable to law giving authority relating to labour but practically the only Punjab congress approved the employment children act (ECA) with some changings which are more similarly to the national or federal in 2011 (Brackly, 2013). Through the employment and service conditions Bill-2009 (ESC) was try to implement and to consolidate the prevailing labour laws before the 18th Amendment the government of Pakistan through the ministry of labour (Pasha, 2013). Some serious reservations on the bill had trade unions and worker organizations. This process finished with the 18th Amendment, in which child rights that has ratified in Pakistan through United Nations Convention on the rights of the child (UNCRC) that affords broader outlines for the safeguard and promotion in November 12, 1990 (Bukari, 2008). Similarly, Sindh Assembly endorsed the Sindh Child Protection Authority Act later in 2011 (Bukari, 2008). This Authority was in the need of special protection measures to ensure the rights of the kids but the major drawback of it was that it acts as salient law and it is just concentrated on setting up of Authority. In addition, the main purposes of Child Protection Units do not properly construct that are about the safety and security measures for children. Under this Act, the instructions have yet to be notified (Satter, 2011). The 18th Constitutional Amendment has brought a major shift into the arena of child rights. Now after the devolution, further Under Article 142 (c) and under Article 270 A (6) the situation of child rights amend or repeal the federal laws as per Article 7 of constitution “the State” includes Provincial Government and Provincial Assembly (Satter, 2011). Unless measures commenced for enabling legislation, child rights cannot protected and promoted in the post of 18th Constitution amendment scenario. Therefore, there is a necessity to comprehend the accountabilities of provincial government with repute law making on child rights. The protection of child rights in the province needed to devise a clear strategy for future actions within the present state of dealings (Pasha, 2013). This study attempts to focus on the legislative authority in relation to labour and social security under the 18th Constitutional Amendment in which all matters now fall within the exclusive administrative and legislative domain of the provinces and the Parliament has completely stripped out from most of the matters of state. It contends that the fundamental rights as right to welcome connotation and the veracious to dignity, life and communal prosperity assured by the Constitution (Bukari, 2008).

After critically evaluating the document of constitution of Pakistan, 1973, we found that the main problem is not only related with to the term of child and the minimum age for working, there are some other factors which were not properly handled and defined by all legislation about it. All those factors were following;

- Hours of working
- Periods of Rest
- Working at nights etc

It was also observed that no practical implementation at the employer level and lack of attention among the coalition partners passing the law can lead to implementation failure at the policy formulation stage. The Constitutional guarantees are meant to get protection and complete prohibition of child labour and hazardous employment that leads them towards delinquent behaviour. Constitutional guarantees along with a proper legal framework (national and international), education and elimination of poverty can exclude causes of child labour and its impact of delinquent behaviour in the society. So because of poverty and low educational background of parent were some of the major reasons adduced for engaging children in labour. Therefore, the municipal assembly should embark on educational campaigns to sensitize parents on the need to educate children while setting aside some funds to help those who cannot afford

certain school expenses and genuinely are needy. Similarly, the laws protecting and promoting children's rights do not remain "paper work" but properly enforced to minimize violations of children's rights that is ensured by the Government. So children need to protect in particular, as they are vulnerable sections in the society with dogmatic commitment. The ultimate abolition of the child labour that leads them towards delinquent behaviour could only be possible if it has become a part of an overall legalisation of Pakistan.

4. Recommendations

There is no specific category or list of hazardous work in subsidiary legislation on hazardous employment under Article 11. So make the list of hazardous work and need to just gazette. In the Occupational Health, Safety and Welfare that list has helped to address the absence of specific provisions on child labour.

1. According to the ILO Minimum Age Convention, children between 12 and 14 years are not allowed for employment. When the law that compatible with the internationally agreed commitments, then the laws will be mutually reinforcing. All ages have covered in the draft Bill on trafficking in persons and so it will be more useful.
2. In construction projects, it is violation of fundamental rights of children as ensured under Constitution and this aspect of children services in construction project are not covered in the Employment of Children Act, 1991. Construction work will be considered as a hazardous occupation in the Employment of Children Act in which it was necessary to ban on the child (under age of 14) service or labour.
3. It was highly criticized that under Article 11 strongly prohibited force labour and slavery, but not proper schedule exit in it. State need to make a schedule for proper application of fundamental rights, as power conferred under Article 11.
4. At the implementation level any grievance regarding violation of the provisions of law regarding CL/WFCL are taken up for consideration.
5. The policy of employment engrafted in Employment of Children Act, 1991 and The Bonded Labour System (Abolition) Act, 1992 that claimed to be comprehensive in scope so it may prohibit the consequences of the child (under age of 14) labour are same whether their engagement is illegal or legal.
6. In Article 37 (e, f) of constitution concluding is the antithesis of the special protective cover authorized. Actually, the policy of laissez-faire employment is a paradoxical and old-fashioned gate step. Therefore, the policy of permitting employment is violation of Article 11. Thus, the state has responsible and controlled all the activities of the minors, including freedom of employment under that general policy of the law.
7. In post devolution scenario made a systematic approach towards child protection in order to have pragmatic solutions of the problems. Similarly, need for self-realization and civil society organizations to redesign what they are doing regarding child rights.
8. Introduced and share the Standards Operating Procedures (SOP) among all the provinces of Pakistan in order to get benefit from the positive experiences of each other.
9. Engage judiciary in dialogue in order to sensitize the child protection issues in already established systems.
10. Transfer the administrative control to the Child Protection and Bureau of social welfare instead home department of government. For this purpose, governments arrange setup

and collaborating with child protection institutes licensing, adoption minimum care standards and temporary shelter.

11. As legitimate interests confirmed under the law, the victim have right to involved in the procedure because a condition of punctuality and rational voyage is implied in all cases.
12. In the context of human trafficking, a domestic investigation conducted in their own territories where the events happening. Similarly in case of cross-border trafficking, the international commitment of the member states has duty to collaborate effectually with the appropriate authorities of other States.
13. Government needs to focus and minimize on gender discrepancy in education. Accordingly, income through work of the mother is serious factors of child labour and their schooling. By increasing opportunities for females may decrease child labour and increase child schooling. Micro credit through NGOs is important for the employment of women.

The ignorance of the law is not an excuse and tempering justice with mercy may not be out of place. By education can help to provide awareness regarding CL/WFCL and its significances on the physical and the psychological well-being of the children. Therefore, about the dangers of such labour educating them to employers, parents and the children themselves and the implications on their health and the consequences for society may help in curbing such unfortunate occurrences.

5. Conclusion

This study was concluded as that there are six constitutional provisions in the constitution of Pakistan 1973 such as slavery, forced labour, etc., prohibited. (Article 11); freedom of association (Article 17); freedom of trade, business or profession (Article 18); right of education (Article 25 (A)); promotion of social justice and eradication of social evils (Article 37 (e)) and 18th amendment for the prohibition of child labour. It was also concluded that the main factors of child labour and delinquent behaviour are poverty, family decay such as broken family system due to divorce; lack of morality; absence of attention in education; physical neglect and lack of training that become the main cause of early manipulation of children into unskilled labour.

The above-mentioned recommendations have serious implication with reference to Child Labour leading to delinquent behaviour problems in Pakistan. This study brings to point that children have suffered a lot despite of constitutional guarantees of fundamental right of freedom from forced Labour and slavery under Article 11. Similarly, the education system and poverty are the basic cause of child labour. And many other socioeconomic factors complicatedly linked with child labour. It is actually a multitude problem, which is involved in many other social illnesses. Delinquent behaviour is one of this social illest of children that is why they are engaged in drug trafficking, bagger and prostitution like activities. If the state has not play active role to protect children from hazardous work then due to this weakness create inequalities which are hard to change. This study focuses on the constitutional guarantees of fundamental right under Article 11 and other national and international legislative enactment regarding Child Labour.

Many declarations, contention, and national and international enactment has made to prohibited child labour but still its proper implication of legislative enactments, some ambiguity occurred as mostly national and international enactments do not defined the term of the hazardous categories of Child Labour. This is an area of research, which will elaborate the deficiency and ambiguity in the legislative provision and state responsibility regarding elimination of Child Labour. This research finding implies that the legislative body, especially the Provincial Assembly after the

18th amendment have in the positioned constitutionally that it protects children from all forms of labour as ensured under Article 11 of the Constitution of Pakistan. From the perspective of Pakistan, further researches can be conducted to analyze or study the influence of the legislation of child labour on delinquent behaviour activities. As this study, elaborates the basic reasons of child labour and its impact on delinquent behaviour under the constitutional guarantee. So ways are forward to further research in this field.

References

- Abebe, T., & Bessell, S. (2011). Dominant discourses, debates and silences on child labour in Africa and Asia. *Third World Quarterly*, 32(4), 765-786
- Arat Z, F. (2002). Analyzing child labor as a human rights issue: Its causes aggravating policies and alternative proposals. *Human Rights Quarterly*, 24(1), 177-204.
- Bass L, E. (2004). *Child labour in sub-Saharan Africa*. Chicago: Lynne Rienner.
- Bejarano. (1929). *La Delincuencia Infanttil en Colombiay profilaxis crimen*. Bogota: Editirial Minerva. Spain
- Brackly, B. (2013). *The Global Slavery Index*. New York: The Walk Free Foundation. Retrieved from; <https://www.walkfreefoundation.org/news/resource/the-global-slavery-index-2013/>
- Brown, E. (2011). *Employment of Children, SN*. Wales: House of Common's Library Standard Note, Research Center.
- Brown, K. (2005). *International Labour Organization Convention 182: Worst forms of child labour Convention 1999*.
<http://www.ilo.org/public/english/standards/ipec/ratification/convention/text.htm>.
- Bukari, S. (2008). *Ministry of Child Labour*. Islamabad: Express Tribune.
- Devid, R. (2012). *Human Rights and Social justice-Lets end Child Labour*. A paper present in international conference on International Labour Organization: World Day Against Child Labour: <http://www.ilo.org/ipec/Campaignandadvocacy/wdacl/2012/lang--en/index.htm>
- ILO, (2008). *International Labor Organization*.
<http://www.ilo.org/ilolex/cgi/lex/pdconv.pl?host=status01&textbase=iloeng&document=12548&chapter=6&query=Pakistan%40ref&highlight=&querytype=bool&context=0>.
- ILO Committee of Experts. *Individual Observation concerning Minimum Age Convention, 1973* (No. 138) Pakistan (ratification: 2006) Published: 2011; accessed February 15, 2018; <http://www.ilo.org/ilolex/cgi/lex/pdconv.pl?host=status01&textbase=iloeng&document=12548&chapter=6&query=Pakistan%40ref&highlight=&querytype=bool&context=0>.
- J.Scanlon, F. A. (2010). *Child Labour a Public Health Perspective*. Oxford UP.
- Jafri SMY, R. (1997). Some dimensions of child labour in Pakistan. *Pak Dev Rev*, 36:69-86.
- Shaw, J.(2006). State Bank of Pakistan, Underemployment in Pakistan ,Social section.The state of Pakistan's economy. (pp. 1-6). Karachi: FY06. Daily Report.
- Kamer.D. (2013, May 14). *Datum Corporation*. Retrieved November 19, 2014, from Labour Law Support: <http://www.sja.gos.pk>
- Kumar, S. (2004). *Ministry of Labour and Employment, Working Group Report on Strategy for the 10th Plan*. Gujarat: Human Development Reports.
- Longford, M. (1995). Family poverty and the exploitation of child labor. *Law & Policey*, 17(4): 471-82.
- M.Muktar. (2009, January 30). *Performance of Ministry of Women Development*. (M. S. Ghurki, Performer) National Assembly of Pakistan, Islamabad, Pakistan.
- Mahmed, L. C. (2001). Child labor: Myths, theories, and facts. *Journal of International Affairs*, 59-73.
- Mahmood, M. (2014). *The constitution of the Islamic Republic of Pakistan 1973*. Lahore: Al Qanoon Publisher.

- Makhoul, J. J. (2004). Violence: The silent determinant of child labor. *Journal of Children & Poverty*, pp. 10(2): 131-47.
- Musvoto, E. (2007). Child Labour in South Africa: A Brief Overview. *Children World Wide Trust*, pp. 77-89.
- Pakistan Bureau of Statistics. *Labor Force Survey Islamabad*; 2012-2013.
http://www.pbs.gov.pk/sites/default/files/Labour%20Force/publications/lfs_Annual_2012_13/t15-pak.pdf.
- Pasha, J. M. (2013). *The Constitution of Islamic Republic of Pakistan 1973*. Lahore: Al Qanoon Publisher.
- Pylee, D. M. (1994). *Public Interest Litigation and Abolition of Bonded Labour*. National Assembly (Session 26th) , Islamabad, Pakistan.
- Ray, R. (2000). Child Labor, Child schooling and their Interaction with adult labour: empirical evidence for Peru and Pakistan. *The World Bank Economic*, pp. 347-67.
- Rehman, H. (2011). Elimination of Child Labour. *Law and Justice Commission Pakistan*, 57-58.
- Robert, R. D. (2008). Child Delinquency in America. In D. Bernad, *Child delinquency and the prophylaxis of crime in early 20th century Latin America* (pp. volume.24, n.6). Washington: Rev Panam Salud .
- Saharay, H.K (2001). *Comparative Constitution*. (pp. 281-282). Retrieved from www.sciepub.com/reference/177238
- Scanlon TJ, P. V. (2010). Child Labour. In S. F. Lynch MA, *Child Labour effect in the society* (pp. 325:401-3). BMJ.
- Sinha, I. (2005). *Paper on Globalization & Human Rights*. Sanlaap India.
- Susan, D. (2004). *World Health Organization Report*. Denmark.
- UNICEF. (2010). *State of the World's Children*. Washington.
- The Constitution of the Islamic Republic Of Pakistan (1973). Retrieved From <http://cii.gov.pk/aboutcii/history/constitution.pdf>
- Wigle.D. (2003). *Child health and the Environment*. New York: Orford University Press.
- Satter, E. (2011). *Your child's weight: Helping without harming*. kelcy Press.